

Message

From: Talbot, Kristine [Talbot.Kristine@epa.gov]
Sent: 11/10/2021 7:59:37 PM
To: Jim Andrews [Jim.Andrews@arkansas.gov]; Nystrom, Thomas [Nystrom.Thomas@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]
Subject: RE: Toltec - Hydro Study Results of EPA Proposal

Thank you, Jim.

From: Jim Andrews <Jim.Andrews@arkansas.gov>
Sent: Wednesday, November 10, 2021 8:45 AM
To: Talbot, Kristine <Talbot.Kristine@epa.gov>; Nystrom, Thomas <Nystrom.Thomas@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>
Subject: RE: Toltec - Hydro Study Results of EPA Proposal
Importance: High

Good morning, all.

Attached please find a revised report from the hydrologist contracted by the Division of Arkansas State Parks. My apology for any confusion as the information flow between legal and engineering could have been better. I think everyone is now "on the same page" that the hydrologist's modeling for drainage structures was based on a hypothetical and does represent anyone's engineering proposal.

Many thanks and best regards,

Jim



JIM F. ANDREWS, JR.
GENERAL COUNSEL

Arkansas Department of Parks, Heritage and Tourism
Office of the Secretary
1100 North Street
Little Rock, AR 72201
jim.andrews@arkansas.gov
p: 501.324.9157 | f: 501.324.9575

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From: Jim Andrews
Sent: Tuesday, November 9, 2021 8:44 AM
To: Talbot, Kristine <Talbot.Kristine@epa.gov>; Nystrom, Thomas <Nystrom.Thomas@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>
Subject: FW: Toltec - Hydro Study Results of EPA Proposal
Importance: High

Good morning, Kristine, Tucker and Tom.

We have data from FTN, the hydrologist contracted to the Department of Parks, Heritage and Tourism.

Please see the attached and see below.

Bottom line is the proposed remediation plan is acceptable for maintaining an approximate maximum pool elevation of 232' and in the event of a 100 year flood.

If we need to discuss further, please let me know.

Many thanks,

Jim



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ARKANSAS.GOV

From: Jordan Thomas <jordan.thomas@arkansas.gov>
Sent: Monday, November 8, 2021 7:47 PM
To: Jim Andrews <Jim.Andrews@arkansas.gov>
Cc: Jeff King <jeff.king@arkansas.gov>; Shea Lewis <shea.lewis@arkansas.gov>; Grady Spann <Grady.Spann@arkansas.gov>; Stewart Carlton <Stewart.Carlton@arkansas.gov>; Mike Wilson (ADPHT) <Mike.Wilson@arkansas.gov>; Tracy King <Tracy.King@arkansas.gov>; Christopher Myers (ADPT) <Christopher.Myers@arkansas.gov>
Subject: Toltec - Hydro Study Results of EPA Proposal

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The EPA proposed alterations will provide similar benefits for smaller intensity and duration storms, potentially keeping the main pond normal pool elevation well below 234.00 most days of the year under the current model's assumptions.

State Park's P&D staff and FTN agree these proposed alterations are acceptable and meet our goals of mitigating further damage to the mounds.

Additionally, we recommend the riser structure regulating flow into the existing 24 inch culvert under Mound View Drive be removed as soon as possible as a first step.

Thanks,
Jordan

Jordan Thomas
Design Services Manager
Planning and Development

Division of Arkansas State Parks
One Capitol Mall Ste. 4B-210
Little Rock, AR 72201
jordan.thomas@arkansas.gov
p: 501.682.6939

ArkansasStateParks.com



Message

From: Talbot, Kristine [Talbot.Kristine@epa.gov]
Sent: 10/25/2021 5:00:59 PM
To: Everett Bandy [ebandy@quapawnation.com]; Andrea Hunter [ahunter@osagenation-nsn.gov]; Nystrom, Thomas [Nystrom.Thomas@epa.gov]; Jones, Curry [jones.curry@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]
CC: bgonzalez@mycaddonation.com; Jess Hendrix [Jess.Hendrix@osagenation-nsn.gov]; Sarah O'Donnell [sodonnell@osagenation-nsn.gov]; Morgan Currey [mcurrey@osagenation-nsn.gov]; rhope@hope-lawyers.com; joseph.byrd@quapawnation.com; earlii@tunica.org; Jim Andrews [Jim.Andrews@arkansas.gov]; Tanner, Lori [tanner.lori@epa.gov]; Sherwood, Chelsey [Sherwood.Chelsey@epa.gov]; Hicks, Curtis [hicks.curtis@epa.gov]; Acosta, Gerardo [Acosta.Gerardo@epa.gov]; Gee, Randy [Gee.Randy@epa.gov]; pedwards@mycaddonation.com; Alvarado, Tina [Alvarado.Tina@epa.gov]
Subject: RE: October Progress Report - EPA Clean Water Act case affecting Toltec Mounds

Thank you, Mr. Bandy. We can certainly have a joint consultation for this matter.

Thank you,

Kristine

Kristine Talbot
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel (ORCEW)
1201 Elm Street, Suite 500
Dallas, Texas 75270
Tel. (214) 665-8356
talbot.kristine@epa.gov

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From: Everett Bandy <ebandy@quapawnation.com>
Sent: Monday, October 25, 2021 9:32 AM
To: Andrea Hunter <ahunter@osagenation-nsn.gov>; Nystrom, Thomas <Nystrom.Thomas@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>
Cc: Talbot, Kristine <Talbot.Kristine@epa.gov>; bgonzalez@mycaddonation.com; Jess Hendrix <Jess.Hendrix@osagenation-nsn.gov>; Sarah O'Donnell <sodonnell@osagenation-nsn.gov>; Morgan Currey <mcurrey@osagenation-nsn.gov>; rhope@hope-lawyers.com; joseph.byrd@quapawnation.com; earlii@tunica.org; Jim Andrews <Jim.Andrews@arkansas.gov>; Tanner, Lori <tanner.lori@epa.gov>; Sherwood, Chelsey <Sherwood.Chelsey@epa.gov>; Hicks, Curtis <hicks.curtis@epa.gov>; Acosta, Gerardo <Acosta.Gerardo@epa.gov>; Gee, Randy <Gee.Randy@epa.gov>; pedwards@mycaddonation.com
Subject: RE: October Progress Report - EPA Clean Water Act case affecting Toltec Mounds

The Toltec Mounds Keepsafe Cemetery has been used by multiple tribes. It would be fruitful to have a joint consultation for this cemetery if one will be held.

Thank you,
-Everett Bandy
Preservation Officer/QNHPP Director
Quapaw Nation
P.O. Box 765
Quapaw, OK 74363

(w) 918-238-3100 ext. 17001
(f) 918-674-2456

From: Andrea Hunter <ahunter@osagenation-nsn.gov>
Sent: Monday, October 25, 2021 9:29 AM
To: 'Nystrom, Thomas' <Nystrom.Thomas@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>
Cc: Talbot, Kristine <Talbot.Kristine@epa.gov>; bgonzalez@mycaddonation.com; Jess Hendrix <Jess.Hendrix@osagenation-nsn.gov>; Sarah O'Donnell <sodonnell@osagenation-nsn.gov>; Morgan Currey <mcurrey@osagenation-nsn.gov>; Everett Bandy <ebandy@quapawnation.com>; rhope@hope-lawyers.com; Joseph T. Byrd <joseph.byrd@quapawnation.com>; earlii@tunica.org; Jim Andrews <Jim.Andrews@arkansas.gov>; Tanner, Lori <tanner.lori@epa.gov>; Sherwood, Chelsey <Sherwood.Chelsey@epa.gov>; Hicks, Curtis <hicks.curtis@epa.gov>; Acosta, Gerardo <Acosta.Gerardo@epa.gov>; Gee, Randy <Gee.Randy@epa.gov>; pedwards@mycaddonation.com
Subject: RE: October Progress Report - EPA Clean Water Act case affecting Toltec Mounds

Good morning Mr. Nystrom,
The Osage Nation requests to consult on the EPA enforcement action for the Toltec Mounds keepsafe cemetery.

Thank you,

Dr. Andrea A. Hunter
Director, Tribal Historic Preservation Officer
Osage Nation
627 Grandview Avenue
Pawhuska, OK 74056

Phone: (918) 287-5671
Fax: (918) 287-5376

From: Nystrom, Thomas <Nystrom.Thomas@epa.gov>
Sent: Wednesday, October 13, 2021 12:58 PM
To: Jones, Curry <jones.curry@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>
Cc: Talbot, Kristine <Talbot.Kristine@epa.gov>; bgonzalez@mycaddonation.com; Andrea Hunter <ahunter@osagenation-nsn.gov>; Jess Hendrix <Jess.Hendrix@osagenation-nsn.gov>; Sarah O'Donnell <sodonnell@osagenation-nsn.gov>; Morgan Currey <mcurrey@osagenation-nsn.gov>; Everett Bandy <ebandy@quapawnation.com>; rhope@hope-lawyers.com; joseph.byrd@quapawnation.com; earlii@tunica.org; Jim Andrews <Jim.Andrews@arkansas.gov>; Tanner, Lori <tanner.lori@epa.gov>; Sherwood, Chelsey <Sherwood.Chelsey@epa.gov>; Hicks, Curtis <hicks.curtis@epa.gov>; Acosta, Gerardo <Acosta.Gerardo@epa.gov>; Gee, Randy <Gee.Randy@epa.gov>; pedwards@mycaddonation.com
Subject: RE: October Progress Report - EPA Clean Water Act case affecting Toltec Mounds

All,

As discussed during our July 15, 2021, informal consultation phone conference, EPA is providing monthly updates on EPA's enforcement matter involving the unpermitted water control structures on Mound Lake that are causing impacts to the Keepsafe Cemetery and important archeological sites at Toltec Mounds Archeological State Park. This is update number 3.

Updates:

- On 9/16/21, the Arkansas Department of Parks, Heritage and Tourism (ADPHT) provided EPA with hydrology survey information. EPA discussed this survey information with ADPHT on 9/27/21 and is evaluating injunctive relief options to address the unpermitted water control structures on Mound Lake. ADPHT is working to finalize their hydrology study report and EPA will continue to follow-up with ADPHT for updates on the report.
- EPA is planning to proceed with an enforcement action to address the unpermitted water control structures on Mound Lake. EPA will provide you with a copy of any final enforcement action.

Before EPA proceeds with an enforcement action, EPA would like to extend a formal offer of consultation regarding this enforcement matter to the Caddo Nation of Oklahoma, Osage Nation, Quapaw Nation, and Tunica-Biloxi Indian Tribe. If you would like to schedule a formal consultation with EPA or have another informal consultation with EPA on this matter, please let me know by October 20.

Also, as an update, Kristine Talbot, the EPA Region 6 attorney assigned to this matter, will be going on maternity leave beginning November 19. While she is on maternity leave, Tucker Henson (cc'd) will be overseeing this matter and will be the legal point of contact should you have any questions.

Please feel free to call me directly if you wish to discuss any of this in more detail or have any questions. If you call and have to leave a message, please send me an email so I make sure to check the message and return your call.

Thank you,
Tom

Tom Nystrom (ECD-WR)
EPA Region 6, Water Resources Section
Enforcement and Compliance Assurance Division
1201 Elm St., Suite 500
Dallas, TX 75270
(214) 665-8331

Message

From: Talbot, Kristine [Talbot.Kristine@epa.gov]
Sent: 11/9/2021 4:51:37 PM
To: Jim Andrews [Jim.Andrews@arkansas.gov]
CC: Henson, Tucker [Henson.Tucker@epa.gov]
Subject: RE: Toltec - Hydro Study Results of EPA Proposal

1:00pm works for us. I'll send out a Teams invite shortly.

Thanks,
Kristine

From: Jim Andrews <Jim.Andrews@arkansas.gov>
Sent: Tuesday, November 9, 2021 10:48 AM
To: Talbot, Kristine <Talbot.Kristine@epa.gov>
Cc: Henson, Tucker <Henson.Tucker@epa.gov>
Subject: RE: Toltec - Hydro Study Results of EPA Proposal

Thank you, Kristine.

Can you kindly set up a time today?
Perhaps 1:00 pm Central?

Best,

Jim



JIM F. ANDREWS, JR.
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From: Talbot, Kristine <Talbot.Kristine@epa.gov>
Sent: Tuesday, November 9, 2021 10:33 AM
To: Jim Andrews <Jim.Andrews@arkansas.gov>
Cc: Henson, Tucker <Henson.Tucker@epa.gov>
Subject: RE: Toltec - Hydro Study Results of EPA Proposal

Hi Jim,

Thank you for sharing the results. I received your voicemessages and Tucker and I can be available to discuss these hydrology results today from noon to 2pm or anytime tomorrow before noon. Let us know if any of those times are convenient for you.

Thanks,

Kristine

From: Jim Andrews <Jim.Andrews@arkansas.gov>

Sent: Tuesday, November 9, 2021 8:44 AM

To: Talbot, Kristine <Talbot.Kristine@epa.gov>; Nystrom, Thomas <Nystrom.Thomas@epa.gov>; Henson, Tucker <Henson.Tucker@epa.gov>

Subject: FW: Toltec - Hydro Study Results of EPA Proposal

Importance: High

Good morning, Kristine, Tucker and Tom.

We have data from FTN, the hydrologist contracted to the Department of Parks, Heritage and Tourism.
Please see the attached and see below.

Bottom line is the proposed remediation plan is acceptable for maintaining an approximate maximum pool elevation of 232' and in the event of a 100 year flood.
If we need to discuss further, please let me know.

Many thanks,

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State Park's P&D staff and FTN agree these proposed alterations are acceptable and meet our goals of mitigating further damage to the mounds.

Additionally, we recommend the riser structure regulating flow into the existing 24 inch culvert under Mound View Drive be removed as soon as possible as a first step.

Thanks,
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Planning and Development

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jordan.thomas@arkansas.gov
p: 501.682.6939

ArkansasStateParks.com



Message

From: Jim Andrews [Jim.Andrews@arkansas.gov]
Sent: 11/10/2021 2:44:38 PM
To: Talbot, Kristine [Talbot.Kristine@epa.gov]; Nystrom, Thomas [Nystrom.Thomas@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]
Subject: RE: Toltec - Hydro Study Results of EPA Proposal
Attachments: Toltec Mounds model Results_rev1109.docx

Importance: High

Good morning, all.

Attached please find a revised report from the hydrologist contracted by the Division of Arkansas State Parks. My apology for any confusion as the information flow between legal and engineering could have been better. I think everyone is now "on the same page" that the hydrologist's modeling for drainage structures was based on a hypothetical and does represent anyone's engineering proposal.

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jordan.thomas@arkansas.gov
p: 501.682.6939

ArkansasStateParks.com



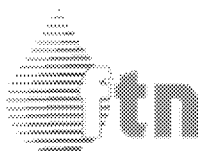
Mound Pond 100-Year Flood HEC-RAS Ver 6.0 2D Rain-On-Mesh Modeling Results for Existing Conditions and Proposed Conditions¹

Notes:

- HW WSE stands for headwater water surface elevation upstream of the culvert/ structure,
- TW WSE stands for tailwater water surface elevation downstream of the culvert/structure.
- Model mesh elements are approximately 50 ft x 50 ft
- The assumptions are as follows for both existing and proposed conditions except as noted:
 - Used rainfall amounts from NOAA Atlas 14 rainfall for a single 24-hour duration event using the SCS Type II Temporal Distribution and assuming “average” antecedent moisture conditions (i.e., not dry or wet).
 - The initial Mound Pond elevation was set at the spillway elevation for both existing and proposed structure elevations.
 - All the culverts are flowing freely (i.e., are not being blocked by debris, flashboards/ stoplogs)



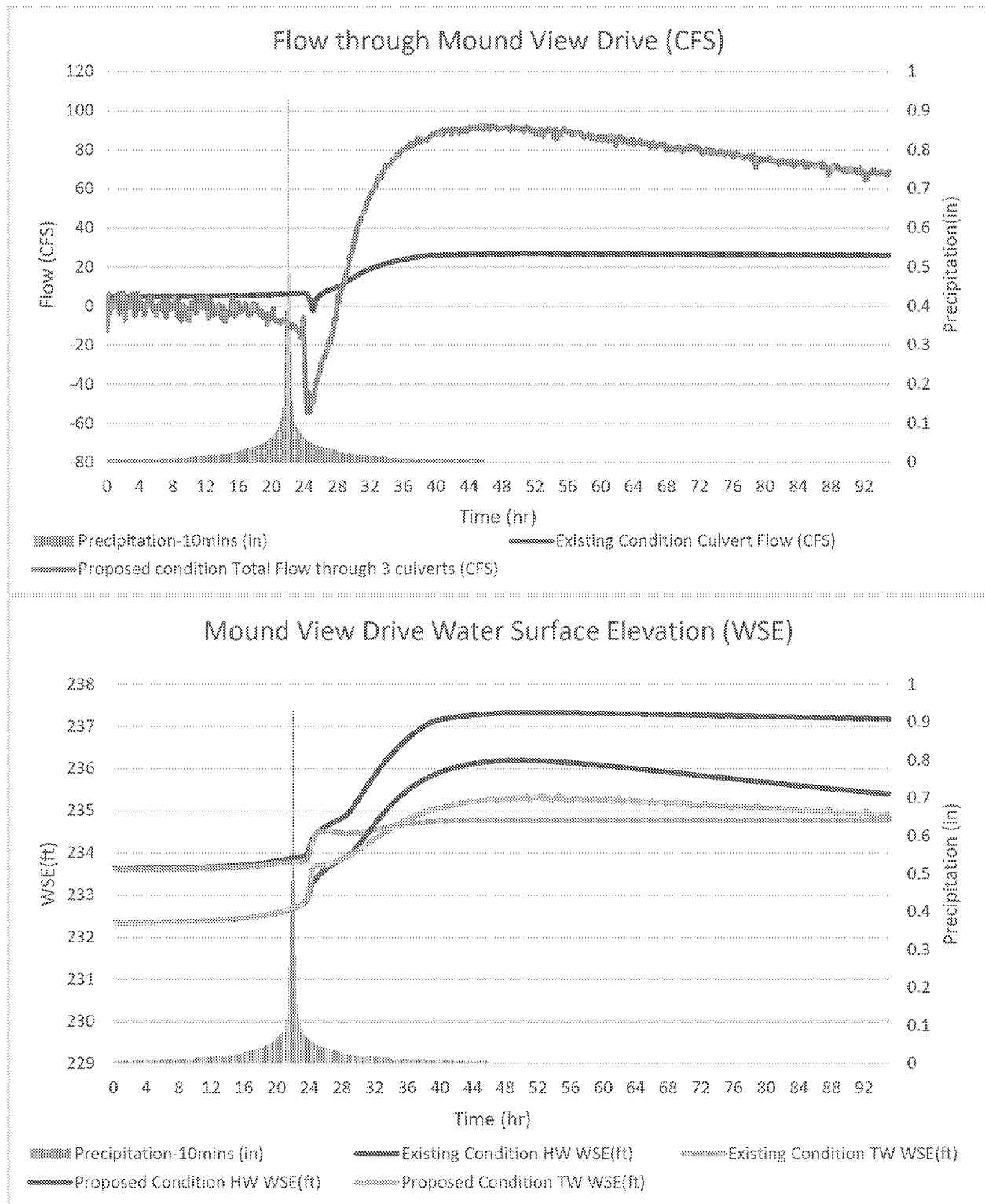
Marc Johnson, PE*, CFM
Principal Water Resources Engineer



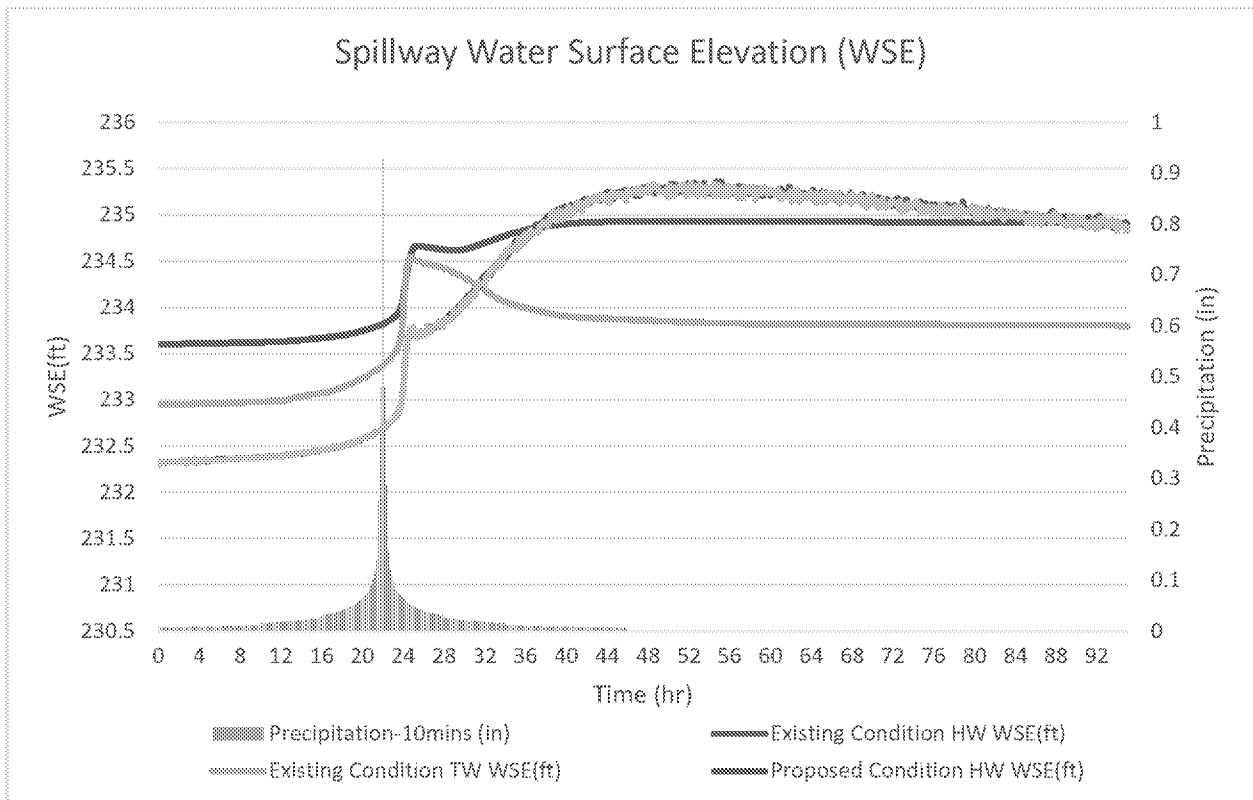
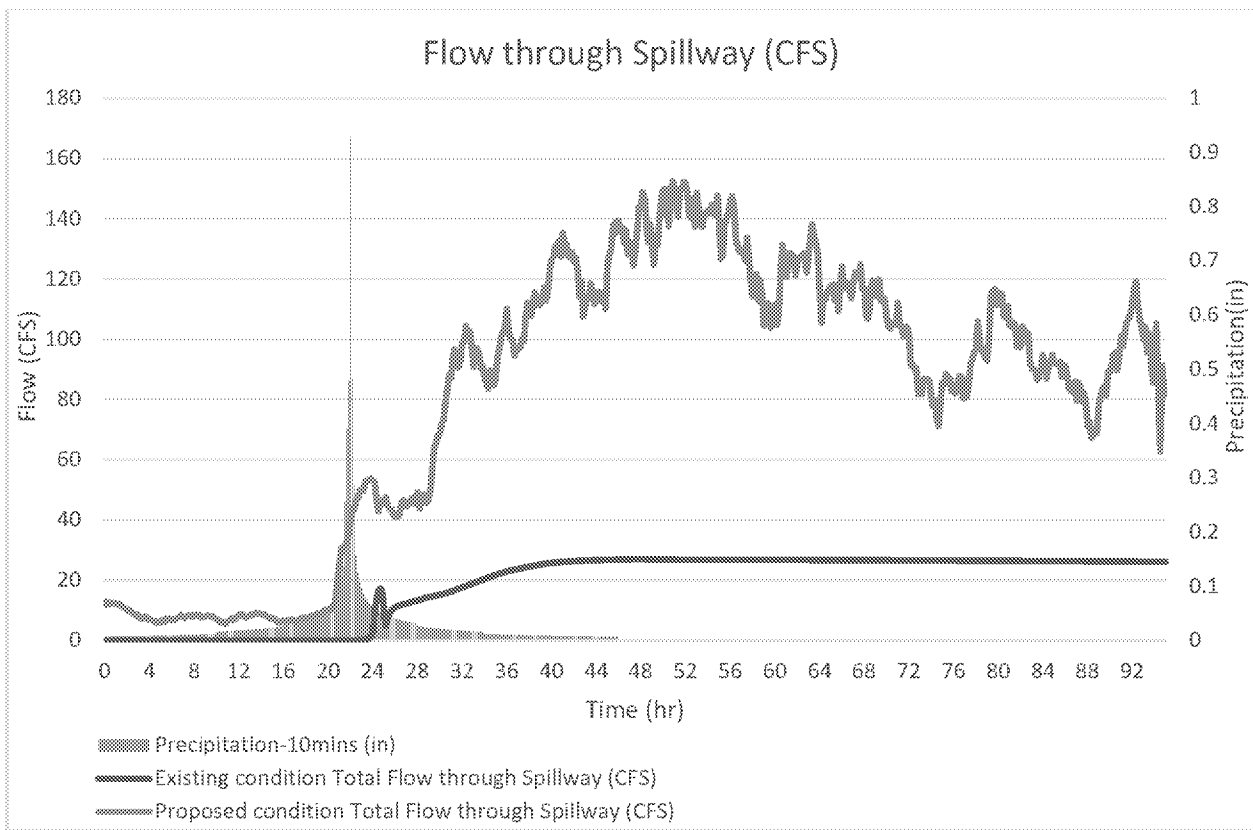
3 Innwood Cir. Ste. 220
Little Rock, AR 72211

*Licensed in AR,FL,LA,KY,MO,MS,TN,NE

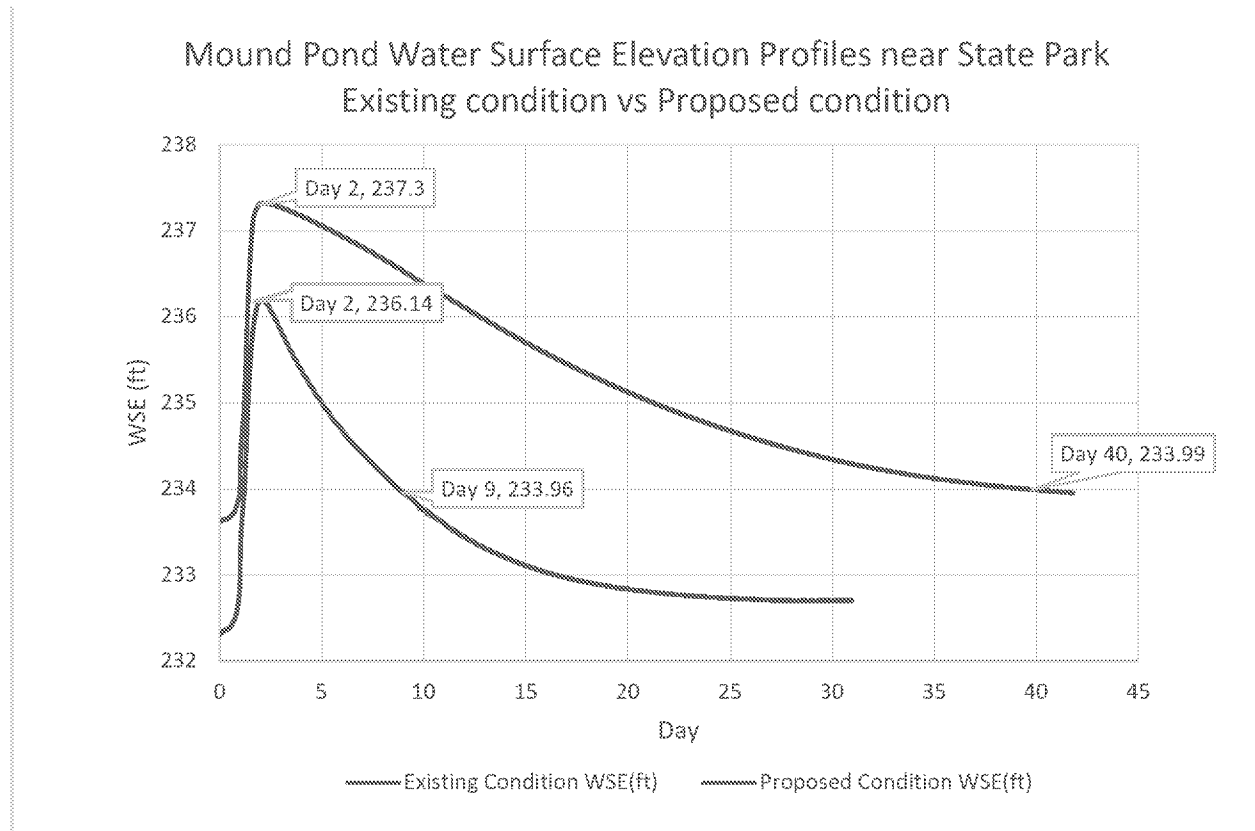
¹ Adding 50 ft of spillway length and 2- 36-in culverts under Mound View Drive.



NOTE: Negative flows through culverts shown above mean that flow is moving “upstream” or from the lower part of Mound Pond (nearest the spillway) to the middle part of Mound Pond (where the State Park is located).



The plot below shows the water surface elevation (WSE) hydrographs of existing and proposed conditions. The results show that the current structure will need 38 days to drain the 100-year flood WSE below 234 ft, NAVD88, while it takes 7 days for the proposed system to drain the WSE below 234 ft NAVD88.





DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

September 6, 2019

Regulatory Division

FILE NO. 2011-00628

Riverbend Estates, LLC
Attn: Mr. Jack D. Wilson
1 Country Club Circle
Maumelle, Arkansas 72113

Dear Mr. Wilson:

A recent field inspection conducted on August 26, 2019, has disclosed that you have constructed a water control structure along the upstream portion of the culvert that drains Mound Lake through Mound View Drive. The water control structure consists of a fabricated metal flash board riser system. You have additionally modified the dam that serves as the most downstream outlet of Mound Lake through placement of fill material, resulting in what resembles a ring levee obstructing all downstream flow. These modifications and placement of fill were completed without a Department of the Army permit. The project is located in Mound Lake in the SW 1/4 of section 10, T. 1 S., R. 10 W., Lonoke County, Arkansas.

Please refer to our April 18, 2018, letter informing you that Mound Lake is considered "waters of the United States" and is subject to the regulatory jurisdiction of the US Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA), 33 Code of Federal Regulations 1344. Additionally, please reference your April 22, 2019, letter to "All Lakeside Residents, Mound Lake Addition" in which you state that Mound Lake is "waters of the US...and is regulated by the Corps of Engineers." The work, having occurred within a water of the United States, constitutes a violation of Section 301 of the Act (33 U.S. Code 1311) since a Department of the Army permit was not obtained prior to beginning the work. Accordingly, you are hereby directed to cease and desist from further work in waters of the United States.

By copy of this letter, I am hereby referring this case to the United States Environmental Protection Agency (EPA). Referral of violations completed by flagrant violators of the CWA is consistent with the 1989 Memorandum of Agreement Between the Department of the Army and the EPA Concerning Federal Enforcement of the Section 404 Program of the CWA.

You may direct questions to Mr. Curry Jones, Chief of the Water Resources Section, EPA Region 6, at telephone number (214) 665-6793.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric M. Noe', with a long horizontal flourish extending to the right.

Eric M. Noe, PMP
Colonel, US Army
District Engineer

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc:

Proj Mgr, Pine Bluff PO

Ch, Regulatory Enf

District Archaeologist and Tribal Liaison, Allen Wilson

US Environmental Protection Agency, Region 6, Curry Jones

US Fish and Wildlife Service, Arkansas Field Office, Melissa Lombardi

Arkansas State Parks, Grady Spann.

Arkansas Department of Environmental Quality, Melanie Treat

Arkansas Game and Fish Commission, Lazendra Hairston

Arkansas Natural Resources Commission, Ken Brazil



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

April 18, 2018

Regulatory Division

FILE NO. 2011-00628

Mr. Jack D. Wilson
1 Country Club Circle
Maumelle, Arkansas 72113

Dear Mr. Wilson:

This is in regard to your April 6, 2018, letter and a meeting held at Toltec Mounds Archeological State Park (TMASP) on March 8, 2018, with Vincent Gregory, Project Manager. During the March 8, 2018, meeting, you addressed your commitment to retaining an engineering firm to assist you in an engineered solution to address flooding and long term inundation issues within Mound Lake Subdivision, TMASP, and upstream land owners. You additionally affirmed that the current 18-inch pipe installed in Mound View Road is serving as the only point of discharge for Mound Lake and that this pipe is compromised and undersized. The project is located in Mound Lake in the SW 1/4 of section 10, T. 1 S., R. 10 W., Lonoke County, Arkansas.

Please be aware that Mound Lake is considered "waters of the United States," and as such, no dredged or fill material may be placed below the ordinary high water mark of Mound Lake without prior written approval from the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S. Code 1344).

We discussed plans to comply with the CWA by addressing non-compliance issues with Nationwide Permit 14. The following discrepancies were noted between the completed work and the terms of the permit (copy of permit enclosed):

- a. General Condition 8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- b. General Condition 9. Management of Water Flows. To the maximum extent practicable, the pre- construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre- construction course, condition, capacity, and location of open waters if it benefits the

aquatic environment (e.g., stream restoration or relocation activities).

- c. General Condition 14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- d. General Condition 17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands
- e. General Condition 20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- f. General Condition 24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

The current restricted flows through the causeway pipe have caused documented excessive inundation of culturally sensitive archeological structures, features, and artifacts collectively managed by TMAPS. TMAPS is identified as a National Historic Land Mark and legally recognized as a Quapaw Tribe of Oklahoma Sacred Site. Additionally a Keep Safe Cemetery exist within the surveyed cadastral boundaries of TMAPS. The Keep Safe Cemetery at TMAPS is designed to provide a safe location which is maintained in perpetuity by the Arkansas Department of Parks and Tourism, for the reburial of human remains repatriated under the North American Grave Repatriation Act of 1990 (43 CFR Part 10). The Keep Safe Cemetery has experienced recurring reported inundation over the total allocated acreage related to this program. The State of Arkansas has expressed concern over inundation and damages of fee land owned by the state related to the cadastral survey boundaries of the TMAPS.

In accordance with 33 CFR Part 325, Appendix C, and 36 CFR Part 800, the current structure is considered to have an adverse effect on a designated historic property. In order to comply with the above referenced regulations, this adverse effect must be addressed.

Lonoke County participates in the National Flood Insurance Program; the floodplain administrator for this county must be contacted to obtain any necessary variances for your project.

Be aware that compliance with the CWA does not relieve you of complying with other applicable local, state, and Federal laws.

Please furnish us your response to this letter within 15 days of the date of this letter explaining your proposed actions and timetable for correcting the noted discrepancies. Failure to comply with this request may result in our initiation of administrative penalty procedures as outlined in 33 CFR 326.6.

Questions on the above may be directed to Vincent Gregory, Project Manager, of our Regulatory Division, at (501) 340-1377.

Sincerely,



Bradley C. Myers
Chief, Regulatory Enforcement Branch

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Enclosures

cc:

Proj Mgr, Pine Bluff PO
Ch, Regulatory Enf
District Archaeologist and Tribal Liaison, Allen Wilson
Director, Arkansas Archeological Survey, Dr. George Sabo
State Archeologist, Arkansas Archeological Survey, Dr. Ann Early
Station Archeologist, Arkansas Archeological Survey, Dr. Elizabeth T. Horton
Director, Arkansas State Parks, Grady Spann
Deputy Director, Arkansas State Parks, Shea Lewis
Manager of Operations, Arkansas State Parks, Mike Wilson
Region 2 Office, Arkansas State Parks, Tracy King
Superintendent, Arkansas State Parks, Stewart Carlton
Manager, Arkansas Natural Resources Commission, Water Resources Division, Edward Swaim

Nationwide Permit No. 14

Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization.

Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status,

unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin

work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(d) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(e) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.nmfs.gov/> and <http://www.nmfs.gov/species/cmh/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been

submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54

U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal

lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for

the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP's, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is

provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWP.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN)

as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;
(2) Location of the proposed activity;
(3) Identify the specific NWP or NWPs the prospective permittee wants to use to authorize the proposed activity;
(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and

other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and
(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for

in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

1. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31)

RIVERBEND ESTATES, LLC

1 Country Club Circle
Maumelle, Arkansas

Ph 501-851-0099

Fax 501-851-8322

April 22, 2019

All Lakeside Residents
Mound Lake Addition
England, AR

RE: Mound Pond discharge outlet tampering

Dear Resident:

We have had several incidents recently of persons blocking the Mound Pond discharge pipe which extends under the causeway into the small pond to control the lake water level. This has cost our personnel time and expense to remove plywood, limbs, rocks, etc., that have been placed in the pipe.

The Corps of Engineers has determined that Mound Pond is 'waters of the US' and have set the elevation for the water level utilizing this discharge pipe. Therefore, anyone tampering with the level of the lake water is in violation of the Corps regulations.

The level of the lake water is important to control flooding of resident property and to control the erosion of the archeological mounds at Toltec Mound State Park. The Department of Parks and Tourism also has a vested interest in the elevation of the water in Mound Pond and will join in any legal proceedings to protect the archeological assets of the Park.

The bottom line is this - *It is not up to the residents to determine the water level.* This is notice to all residents living on Mound Pond that this discharge pipe is on *private property* and is regulated by the Corps of Engineers and **ANYONE** caught tampering with the flow of the water will be prosecuted for trespassing and any other charges as deemed necessary by the appropriate government agencies.

Sincerely,



Jack D. Wilson

Riverbend Estates, LLC

Message

From: Jim Andrews [Jim.Andrews@arkansas.gov]
Sent: 12/1/2021 1:02:29 AM
To: Nystrom, Thomas [Nystrom.Thomas@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]
Subject: Riverbend's Response to EPA New Case Letter
Attachments: Riverbend response to EPA New Case Letter.pdf

Importance: High

Good evening Gentlemen,

I believe attached herewith is the letter we discussed this morning.

I believe in this correspondence that Riverbend is mistaken in concluding that the USACE represented to them Mound Lake was not a WOTUS.

I don't think that was what was communicated.

To support my belief, please see the last page of the document, which purports to be an email from Chris Roark of the USACE.

At the top of that page you will see text quoted verbatim:

"Mound Lake is not a US Army Corps of Engineers lake. It appears to be an old oxbow lake approximately five miles east of the Arkansas River."

Given this context, I believe what was being communicated to Riverbend was that the USACE did not create this lake. Hence, it is not a USACE lake (like DeGray Lake, which was created by the USACE in 1974 near Arkadelphia, Arkansas). Accordingly, I don't think that the USACE was saying Mound Lake was not a WOTUS.

Also, if the USACE thought Mound Lake was not a WOTUS, why was Vincent Gregory (formerly of the USACE) ever involved with it?

I'll get the survey you have requested to you tomorrow.

I don't have a copy of it and will need to get it from the engineers on staff.

Many thanks and best regards,

Jim Andrews



JIM F. ANDREWS, JR.
GENERAL COUNSEL

Arkansas Department of Parks, Heritage and Tourism
Office of the Secretary
1100 North Street

Little Rock, AR 72201
jim.andrews@arkansas.gov
p: 501.324.9157 | f: 501.324.9575

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Message

From: Jim Andrews [Jim.Andrews@arkansas.gov]
Sent: 12/2/2021 7:50:40 PM
To: Nystrom, Thomas [Nystrom.Thomas@epa.gov]; Henson, Tucker [Henson.Tucker@epa.gov]
Subject: FW: Mound Lake Surveys

Importance: High

Tom and Tucker,

Please see the links below for the survey data that you have requested.

Best,

Jim Andrews



JIM F. ANDREWS, JR.
GENERAL COUNSEL

Arkansas Department of Parks, Heritage and Tourism
Office of the Secretary
1100 North Street
Little Rock, AR 72201
jim.andrews@arkansas.gov
p: 501.324.9157 | f: 501.324.9575

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From: Jeff King <Jeff.King@arkansas.gov>
Sent: Thursday, December 2, 2021 1:38 PM
To: Jim Andrews <Jim.Andrews@arkansas.gov>
Cc: Grady Spann <Grady.Spann@arkansas.gov>; Shea Lewis <shea.lewis@arkansas.gov>; Jordan Thomas <jordan.thomas@arkansas.gov>
Subject: RE: Mound Lake Surveys

Jim,

See the following embedded links. The files are over 51 MB. Let me know of any questions.

You can view "CAE Mound Pond Additional Survey.pdf" at:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b69e74fd-db65-46bc-ab85-8ded757de352>

You can view "19804100_TOLTEC_Lake Depth SECTIONS_AERIAL-BRAHAM.pdf" at:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:51af788f-b27a-4dc2-86ac-c231aa4f2ab1>

You can view "19804100_TOLTEC_Lake Depth SECTIONS_AERIAL-MOUND VIEW.pdf" at:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:29b03073-f250-4fe0-b6af-234c3d69e274>

You can view "Mound View Drive Control Point 1.pdf" at:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:f3539c27-b0de-44c5-9407-a35652d2242d>

You can view "Mound View Drive Control Point 2.pdf" at:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:ac767818-0e19-4b39-b19f-238331683bfe>

-Jeff

JEFF KING

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ArkansasStateParks.com



From: Jim Andrews <Jim.Andrews@arkansas.gov>

Sent: Tuesday, November 30, 2021 7:06 PM

To: Jeff King <jeff.king@arkansas.gov>

Cc: Grady Spann <Grady.Spann@arkansas.gov>; Shea Lewis <shea.lewis@arkansas.gov>

Subject: Mound Lake Surveys

Importance: High

Hello Jeff,

I had a good discussion with the USEPA earlier today in regard to Mound Lake.

They report they are making good progress in discussions with the Riverbend developer.

To that end, they have requested a copy of the survey work ASP had recently commissioned for its work with the hydrologist.

Can you kindly pass that along to me so I can get it to the USEPA?

Many thanks,

Jim



JIM F. ANDREWS, JR.

GENERAL COUNSEL

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Toltec Mounds Archeological State Park Mound Lake Hydrological Management Plan

Prepared by Nathaniel Keen, Profesional Engineer-Hydrologist US Army Corps of Engineers
21-Apr-10

	5-year event			10-year event			20-year event			50-year event			100-yr event		
	1-day	7-day	30-day	1-day	7-day	30-day	1-day	7-day	30-day	1-day	7-day	30-day	1-day	7-day	30-day
Precipitation (in)	3.7	6.9	9.7	4.2	8.1	13.5	4.5	9.4	14.8	4.9	11.8	16.2	5.2	12.6	17.1
Runoff (in)	1.7	4.9	7.7	2.2	6.1	11.5	2.5	7.4	12.8	2.9	9.8	14.2	3.2	10.6	15.1
Evap Losses (acre-ft)	250	583	2500	250	583	2500	250	583	2500	250	583	2500	250	583	2500
Vol. Runoff (acre-ft)	3700	10900	15600	4900	13800	24500	5600	16800	27600	6600	22500	30900	7300	24300	33000
Target Days to Empty	3	7	30	3	7	30	3	7	30	3	7	30	3	7	30
Avg. Req'd Release (cfs)	622	785	262	823	994	412	941	1210	464	1109	1621	519	1227	1750	555
Est. Req Weir Width (ft)	40	50	20	50	60	30	60	80	30	70	100	30	80	110	40
Est. Time to Emp w/ 1-30" culvert (days)	13	20	38	13	20	40	13	20	40	13	20	40	13	20	40
#36" Culverts for target	3	3	1	3	4	2	3	4	2	3	4	2	3	4	2

Wave run-up calcs indicate that a 10" rock, 18" thick will protect from wind driven waves. The wave size protected against is about 1.8FT.

Recommend 3-36" culverts and a minimum weir width of 50ft, these sizes will bring the lake back down within a few days after most major events.

The weir size will have the lake back into natural ranges within 1-2 days of the cessation of even the most extreme event (7-day 100-yr for this basin). The weir's minimum elevation should be 1.5-2.0FT above the acceptable low water line (root line of lowest elevation cypress). One can expect the lake to be at this elevation for 1-2 days.

Even with the 3-36" culverts will allow the lake will over-top the dike for most of the extreme events.

Rainfall and runoff assumptions: used a 2" abstraction from all events, with infiltration refusal after 2", Used elevation 238FT as the normal lake level.